



# Trade Enforcement Information Guide November 2009

**NOTE:** The information contained in this Guide is intended to be a quick reference to common questions and issues involving Trade Practices. It is not intended to and does not replace or change the information contained in the ABC Act, case law or the California Code of Regulations.

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## ALCOHOLIC BEVERAGE LICENSE TYPES

### Numerical Code   Type

- 1 Beer Manufacturer
- 2 Wine Grower
- 3 Brandy Manufacturer
- 4 Distilled Spirits Manufacturer
- 5 Distilled Spirits Manufacturer's Agent
- 6 Still
- 7 Rectifier
- 8 Wine Rectifier
- 9 Beer and Wine Importer
- 10 Beer and Wine Importer's General
- 11 Brandy Importer
- 12 Distilled Spirits Importer
- 13 Distilled Spirits Importer's General
- 14 Public Warehouse
- 15 Customs Broker
- 16 Wine Broker
- 17 Beer and Wine Wholesaler
- 18 Distilled Spirits Wholesaler
- 19 Industrial Alcohol Dealer
- 20 Off-Sale Beer and Wine
- 21 Off-Sale General
- 22 Wine Blender
- 23 Small Beer Manufacturer Exclusively
- 24 Distilled Spirits Rectifier's General
- 25 California Brandy Wholesaler
- 26 Out-of-State Beer Manufacturer's Certificate
- 27 California Winegrowers Agent
- 28 Out-of-State Distilled Spirits Shipper's Certificate
- 29 Winegrape Grower's Certificate
- 40 On-Sale Beer
- 41 On-Sale Beer and Wine/Bona Fide Public Eating Place
- 42 On-Sale Beer and Wine for Public Premises
- 43 On-Sale Beer for Train
- 44 On-Sale Beer for Fishing Party Boat
- 45 On-Sale Beer and Wine for Boat
- 46 On-Sale Beer and Wine for Airplane
- 47 On-Sale General/Bona Fide Public Eating Place
- 48 On-Sale General for Public Premises
- 49 On-Sale General for Seasonal Business
- 50 On-Sale General for Club
- 51 Club
- 52 Veteran's Club
- 53 On-Sale General for Train and Sleeping Car
- 54 On-Sale General for Boat
- 55 On-Sale General for Airplane
- 56 On-Sale General for Vessel of More than 1,000 Tons Burden
- 57 Special On-Sale General

## 58 Caterer's Permit

- 59 On-Sale Beer and Wine for Seasonal Business
- 60 On-Sale Beer for Seasonal Business
- 61 On-Sale Beer for Public Premises
- 62 On-Sale General/Bona Fide Eating Place  
Intermittent Dockside License for Vessels of More  
than 15,000 Tons Burden
- 63 On-Sale Beer and Wine for Hospital
- 64 Special On-Sale General Theater
- 65 Special On-Sale Beer and Wine Symphony
- 66 Controlled Access Cabinet Permit
- 67 Bed and Breakfast Inn
- 68 Portable Bar
- 69 Special On-Sale Beer and Wine Theatre
- 70 On-Sale General – Restrictive Services
- 75 On-Sale Brew Pub/Restaurant
- 76 On-Sale General Maritime Museum Association
- 77 \*Event Permit (May be issued to on-sale general and  
on-sale beer and wine licensee once each calendar  
quarter)
- 78 On-Sale General Wine, Food and Art Culture
- 79 Certified Farmers Market Sales Permit
- 80 Special On-Sale General Bed and Breakfast Inn
- 81 Wine Sales Event Permit
- 82 Wine Direct Shipper Permit
- 83 On-Sale General Caterer's License

## ADVERTISING & ADVERTISING SPECIALTIES

**ADVERTISING** – Business and Professions Code Section 25503(h) prohibits an alcoholic beverage supplier from paying money, giving or furnishing anything of value for the privilege of placing or painting a sign or advertisement on or in any licensed premise. Further, the law prohibits a supplier from compensating a third party (advertising agency, etc.) for placing advertising on behalf of the supplier. Current law does contain several exceptions that permit certain specified suppliers, but typically not wholesalers, to purchase advertising space and time from specified on-sale licensees (certain sports arenas, stadiums, auditoriums, theaters, motion picture studios, entertainment parks, zoos and aquariums). Concessionaires and caterers hold permanent licenses and are considered by ABC to be permanent retail licensees.

### ADVERTISING SPECIALTIES

Advertising Specialties are divided into two categories:

- 1) **Retail Advertising Specialties** – these are items that are useful to the retailer in the normal conduct of the retailer's business. Examples: trays, coasters, coin mats, napkins, thermometers, jiggers, clocks, stirring spoons, pouring spouts, sponges, towels, etc.
  - Retailer Advertising Specialties are permitted for wine and distilled spirits only under Business and Professions Code Section 25600(c).
- 2) **Consumer Advertising Specialties** – items that originate with the supplier for ultimate distribution to the public. Examples: key chains, bottle openers, matches, recipe cards, pamphlets, pencils, pens, hats, t-shirts, etc. They may NOT be items which appeal to minors, such as coin banks, toys, balloons, etc.
  - Consumer Advertising Specialties are a permitted exception under Business and Professions Code Section 25600 and ABC Rule 106(e)(2), subject to monetary limitations.
  - Consumer advertising specialties must be for unconditional distribution to the general public.
  - May be sold or given free of charge by a supplier to a retail licensee.

- Advertising specialties furnished free from the supplier to the retailer may not be sold by the retail licensee, nor may a retailer be paid or credited by the supplier for distribution services.

Other requirements:

- Must bear conspicuous advertising required of a sign (manufacturer's name, brand name, slogan, trademarks, or other symbols associated with the manufacturer).
- Suppliers must keep and maintain records for a 3 year period of all items furnished to retailers.

PERMITTED VALUES	BEER	WINE	DISTILLED SPIRITS
<i>Retailer Advertising Specialties</i> (supplier to retailer)	Prohibited per §25501, except acrylic table tents and paper coasters subject to size and cost restrictions	\$50 per brand per year per §25600(c)	\$50 per brand per year per §25600(c)
<i>Consumer Advertising Specialties</i> (supplier to retailer, for redistribution)	\$.25 per unit, \$15 aggregate per year	\$1 per unit, no aggregate	\$5 per unit, no aggregate
<i>Consumer Advertising Specialties</i> (Wholesaler to consumer; Winegrower or Distilled Spirits Manufacturer to Consumer)	\$.25 per unit	\$1 per unit	\$5 per unit
<i>Consumer Advertising Specialties</i> (Beer Manufacturer to consumer)	\$3.00 per unit	N/A	N/A

NOTE: Value limits based upon original purchase cost to supplier.

## AGE OF MAJORITY (When Are You Actually 21?)

For the purpose of the ABC Act, a person attains the age of 21 on the day of his or her twenty-first birthday, not the day before (*People v. Johnson*).

## AGE REQUIREMENTS TO SELL/SERVE ALCOHOLIC BEVERAGES

### On-sale Licensees:

You may not employ a person under age 21 on the portion of any premises which is primarily designed and used for the sale and service of alcohol for consumption on the premises.

*Restaurants:* In an on-sale bona fide public eating place, as defined in Sections 23038 and 23038.1, any person between 18 and 21 years of age may serve alcoholic beverages to consumers only under the following circumstances: such service occurs in an area primarily designed and used for the sale and service of food for consumption on the premises; and the primary duties of the employee shall be the service of meals to guests, with the service of alcoholic beverages being incidental to such duties. "Serve" or "service" includes the delivery, presentation, opening, or pouring of an alcoholic beverage. Bartenders and cocktail wait staff must be at least 21 years of age (Section 25663).

*Concession Stands:* A person who is at least age 18 but not yet 21 may serve alcohol, as an incidental part of his or her duties, at a fixed concession stand that sells food products, soft drinks, and alcohol.

*Pizza Parlors:* A person under age 21 may not serve alcohol while working behind a fixed counter where only soft drinks, alcohol, and other beverages are dispensed and food items are served at another counter within the premises.

### **Off-Sale Licensees:**

Persons age 18 and older may sell alcohol unsupervised. Persons age 17 and younger may sell alcohol if under the continuous supervision of a person age 21 or older. "Continuous supervision" means that an adult person must be present on the premises to provide direction and assistance, if needed.

Establishments engaged in the concurrent sale of motor vehicle fuel shall, among other things, abide by the following: Employees on duty between the hours of 10 p.m. and 2 a.m. who sell alcoholic beverages shall be at least 21 years of age.

### **Winery Tasting Rooms**

- Tastes of wine (whether given or sold) not "consumption on the premises"---therefore, employment of minors OK. The Department strongly recommends that winegrowers employ persons who are at least 21 years of age to sell/serve tastes of wine.
- Sale by the glass or allowing consumption from the bottle is "consumption on the premises"---therefore, employment of minors not OK.
- If restaurant operated, employees between the ages of 18 and 21 years may serve alcoholic beverages subject to the same restrictions stated above.

## **ALCOHOL AT UNLICENSED PREMISES**

Giving, selling, or furnishing free alcoholic beverages at an unlicensed salon, clothing store, jewelry store, art gallery, etc. is not legal (Section 23300). Businesses like these will be considered illegal bottle clubs if alcohol is provided to, or consumed by, customers (Section 25604).

## **ALTERNATING PROPRIETORSHIPS AND PREMISES DESIGNATIONS**

An alternating proprietor (AP) arrangement is a small winery or brewery operation located within an existing winery or brewery facility (commonly referred to as the "host" winery/brewery.) The AP uses the facilities and equipment of the host winery/brewery to make its own wine. Typically, the host winery/brewery assists the AP in producing its wine/beer and the AP usually stores his/her wine/beer on the premises of the host winery/brewery, but it may be transferred to another bonded premises. The AP must apply for its own Type 02/Type 23 license from the ABC and a bonded winery permit from the Alcohol and Tobacco Tax and Trade Bureau (TTB) or file a Brewer's Notice with TTB depending on the circumstances. The privileges of a Type 02 or Type 23 license are the same when operating as an alternating proprietor except that AP's rarely conduct wine tastings or beer tastings on the host's premises.

The TTB has determined that establishing a physical separation and dedicated premises for each alternating proprietor is not required for all AP applications. Where no separation/dedication is required, then there is no need for the host to reduce its existing premises and the AP is no longer required to define a dedicated premises on the Form 257-NR. Form 257-NR should show the whole facility of the host winery/brewery when diagramming an AP. It is not unusual to have multiple alternating proprietors at a single host premises.

In those cases where TTB deems that such separation/dedication is required, or where the host winery/brewery wishes to physically establish a separate premises for each alternating proprietor, then each AP applicant must complete the diagram portion of Form 257-NR. Likewise, the host winery/brewery should complete a new diagram reducing its existing licensed premises. If there is a dedicated premises for the AP, then the dedicated area and alternating areas should be clearly defined. This is usually done by color coding the alternating areas differently from the dedicated premises of the AP. The areas where the wine or beer is produced become the "alternating" areas shared by each proprietor. These "shared" areas may consist of a crush pad, wine/beer processing tanks, barrel areas, bottling lines, etc. If there is a dedicated premises, it usually has barrels containing wine or beer that is in the fermentation or aging process or it may have cases of finished wine/beer. In either situation, neither federal nor state excise taxes have been paid on this wine or beer. This is also known as "in-bond" wine or beer. Wine or beer that is moved in and out of these areas must be documented by the wineries/breweries and reported to the TTB. In this manner, the TTB is able to identify whose wine/beer is located in a specific area for a specific period of time.

The alternating proprietor arrangement for wineries was approved by TTB and contained in the Federal Register, Volume 55, No. 118 dated 6/19/90 listed under Rules and Regulations #24.136. Alternating proprietorship is also acceptable for distilled spirits manufacturers and the same procedures apply as outlined above.

## **BANNERS**

A supplier may provide, at no charge, interior banners advertising beer that bear conspicuous notice of the beer manufacturer's name, brand name, trade name, slogans, markings, trademarks, or other symbols commonly associated with and generally used by the beer manufacturer in identifying the beer manufacturer's name or product. (Business and Professions Code Section 25611.1)

A beer wholesaler may sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises. Exterior signs include, but are not limited to, signs, inflatables, and banners used to advertise a beer manufacturer's product. Exterior signs must be sold or rented at not less than cost, as defined in Section 17026 of the Business and Professions Code. An exterior sign that is customized for a retailer must be sold, and may not be rented (Business and Professions Code Section 25611.3). "Customization" would include any reference to the name of a retailer or to a specific aspect of the retailer's business or is designed for a specific location such that the sign could not be used by retail licensees without modification.

Exterior banners must be sold or rented to permanent licensees. Suppliers may provide nonpermanent interior and exterior banners to temporary, one-day licensees at no charge (ABC Rule 106(h)). Exterior banners advertising alcoholic beverages may not be placed on a fuel island or across any public thoroughfare, such as a street or sidewalk. (Business and Professions Code Section 23790.5, ABC Rule 106)

## **BAR PROMOTIONS**

Business and Professions Code Sections 25600(a)(1), 25500(a)(2), and 25503(b) generally prohibit licensees from giving away free goods or things of value in connection with the sale or distribution of alcoholic beverages, or suppliers giving anything of value to retail licensees.

Suppliers may not provide samples to consumers except as provided for in Sections 25503.5(c), 25503.55 and 25600.5. No money, services or anything of value may be furnished to retailers in exchange for agreeing to participate in a promotion of a supplier's products. Only those consumer advertising specialties authorized by ABC Rule 106 may be given.

A supplier's representative may discuss and explain the product, furnish allowable signage and decorations, and hand out advertising specialties. Suppliers and retailers may offer coupons that provide a cash rebate or discount to consumers when they purchase a drink provided that it is not a full purchase price refund or discount. A retailer may offer a price reduction for the product being promoted if it is the sole decision of the retailer.

## **BAR BUCKS (see information under "Coupons")**

## **BRING YOUR OWN BOTTLE ("BYOB")**

An on-sale retail licensee may permit an adult customer to bring in personal alcoholic beverages for consumption inside the licensed premises. Corkage fees may be charged to the customer but this is NOT mandatory. Be advised that license privileges may not be exceeded. For instance, a customer may NOT leave the licensed premises with a partially-consumed personal bottle of wine since the wine was NOT purchased from the licensee, nor may a customer bring in any type of alcoholic beverage that could NOT be legally sold by the licensee (e.g., a bottle of vodka on a beer and wine licensed business.) The licensee remains responsible for any violations of law that might occur, such as furnishing alcohol to minors or to obviously intoxicated patrons.

Section 25604 makes it a public nuisance for any person to maintain any club room in which any alcoholic beverage is received or kept, or to which any alcoholic beverage is brought, for consumption on the premises by members of the public or of any club, corporation, or association, unless the person and premises are licensed under the ABC Act. It is a public nuisance for any person to keep, maintain, operate or lease any premises for the purpose of providing therein for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons, unless the person and premises are licensed under the ABC Act. As used herein "consideration" includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

## **CERTIFIED FARMERS' MARKET SALES PERMITS (TYPE 79)**

Section 23399.4 of the Business and Professions Code allows winegrowers to sell a prescribed amount of their wine off-sale at a certified farmers' market (CFM).

The Department has developed a simplified application procedure for licensed winegrowers to obtain this permit. The permit is issued on a fiscal year basis. Permits must be renewed annually along with the master winegrower's license. Applications for the CFM permit are available from any ABC district office and on the Department's Web site: [www.abc.ca.gov](http://www.abc.ca.gov).

Before making application for a Type 79 permit, the Department recommends that the winegrower obtain the required product certificate(s) from the County Agricultural Commission and permission from the CFM to sell wine at that particular site. The California Department of Food and Agriculture Direct Marketing office (916/654-0919) can provide information concerning the CFM program. The California Federation of Certified Farmers' Markets also provides CFM information on the Internet at [www.cafarmersmarkets.com](http://www.cafarmersmarkets.com).

Winegrowers are reminded that Section 23399.4 contains a number of requirements/limitations as summarized below:

- Must hold an active winegrower's license.
- Only the licensee, a member of the licensee's family, or an employee of the licensee is authorized to sell wine off-sale at CFM locations. Such authorization does not extend to other persons, such as agents of the winegrower.
- Wine sold at the CFM must be produced and bottled by the winegrower entirely from grapes grown by the winegrower. Wine that is produced and bottled by a winegrower when any portion of the grapes used are not grown by the winegrower cannot be sold at a CFM.
- No winetastings are permitted at a CFM.
- The permit is issued only for a CFM location. Questions concerning whether a particular location has been certified should be directed to the local County Agricultural Commission.
- A separate permit must be obtained for each CFM location where a winegrower wishes to sell wine. There is no limit on the number of permits which may be held by a single winegrower; however, each permit costs \$58.00.
- Licensed winegrowers eligible for a CFM sales permit shall not sell more than 5,000 gallons of wine annually pursuant to all CFM sales permits held by a single winegrower.
- Licensed winegrowers shall report total CFM wine sales to the department on an annual basis. The report may be included within the annual report of production submitted to the department, or pursuant to any regulation as may be prescribed by the department.

## **CONSIGNMENT SALES**

Consignment sales are prohibited by Business and Professions Code Section 25503 and Title 27 Code of Federal Regulations, Part 11. Consignment sales are defined as a sale or delivery of alcoholic beverages under an agreement whereby title to the alcoholic beverages is retained by the seller or whereby the licensee receiving the alcoholic beverages has the right at any time to return them to the original seller. This includes arrangements by which retailers offer products for sale but do not purchase them until after a sale is made to a consumer.

## CONTESTS

### Bona Fide Nonprofit Organizations - Rule 106(h)

Suppliers may give financial and other support to communities and bona fide nonprofit organizations in connection with contests (golf tournaments, etc.) hosted by the organization to raise funds for their cause. No benefit may accrue to a permanent retail licensee. Financial support may not be conditioned on the sale of the supplier's product.

### Retailer-Sponsored Contests - Rule 106(i)(1)

Retailers may sponsor contests at their premises by providing prizes to contestants, provided that the prizes are **not alcoholic beverages**, that the contest is **not conditioned on the purchase, sale or consumption of alcoholic beverages**, and that the competitive event does not involve consumption of alcoholic beverages (e.g., beer pong).

### Amateur or Professional Organizations - Rule 106(i)(2)

Suppliers may sponsor contests by giving money to amateur or professional organizations, provided that the supplier does not require the exclusive sale of his or her products at the event; that the supplier's products are not exclusively sold at the event; and that entry to the event is not conditioned upon purchase of the supplier's products. The organizers of a contest may purchase award prizes from the distributor at a fair market price. Sponsorship monies must be given to an amateur or professional organization, an unlicensed entity. The amateur or professional organization must be established for the encouragement and promotion of the activities involved.

## CORKAGE FEES

See **BRING YOUR OWN BOTTLE ("BYOB")**

## COUPONS

In *Gonzales v. ABC* (1984) 151 Cal. App. 3d 172, the court held that a straight rebate on the purchase price of alcoholic beverages does not constitute a "premium, gift, or free goods" within the parameters of Section 25600 and Rule 106.

More recently, the court of appeal extended the *Gonzales* reasoning to "contingent rebate" promotions, in which the consumer gets a rebate on an alcoholic beverage product only with the purchase of some other non-alcoholic beverage item. In short, the court held that, notwithstanding the co-purchase requirement, the promotion is nothing more than a rebate, and is thus permissible pursuant to *Gonzales*. Because a rebate on alcoholic beverages is not a "premium, gift, or free goods," it does not fall within the prohibition of Section 25600, and no regulation of the Department can change that (i.e., if permitted under law, Rule 106 cannot make it illegal). (*ABC v. Miller* (2002) 104 Cal. App. 4<sup>th</sup> 1189.)

ABC's current position on coupons and rebates on alcoholic beverages is that, unless the rebate results in the giving of something free, it is permissible. Cross-merchandising or providing a coupon that "gives" consumers a free product if they purchase an alcoholic beverage is a "gift associated with the purchase of alcoholic beverages," and is a violation of ABC Rule 106 and Business and Professions Code Section 25600.

Any coupon promotion, including paperless scanner rebates, must be structured to show a direct cash rebate to the consumer and must be supported by a verifiable audit trail. Payments to retailers by suppliers are generally prohibited by Business and Professions Code Section 25500 or 25502. ABC has permitted payments to retail licensees for coupon promotions if those payments are to reimburse the retailer for cash rebates to consumers as permitted under the *Gonzales & Co. v. Dept. of Alcoholic Bev. Control* (1984) 151 Cal. App. 3d 172 decision. Suppliers' records must contain sufficient information to verify the nature of any such payments – even when the payment is made by a third party, such as a clearinghouse. Suppliers should not make any payments to retailers unless they also retain for their records information to verify that payments are made to reimburse for rebates directly to consumers.

While coupons and rebates on alcoholic beverages are generally permissible, the method of distribution could become a thing of value to a retailer. For example, distributing coupons only to targeted or "key" accounts could be viewed as a prohibited "thing of value." Distributing coupons or "bar bucks" directly to retail licensees could constitute a prohibited "thing of value" since the coupons/bar bucks could be redeemed without an actual consumer purchase. With respect to beer, doing so could result in violating price posting regulations. Suppliers are encouraged to establish appropriate practices and recordkeeping standards to ensure compliance.

## **COUPONS – ELECTRONIC SCANNER PROGRAMS “SCANBACKS”**

ABC conditionally approved a supplier-sponsored price promotion program in which consumers receive an electronic paperless instant discount at point of sale, provided that the supplier agrees to provide certification regarding calculations and delivery of rebates and reimbursements, and a contractual mechanism to monitor retailer compliance and adherence to the following procedures:

- The participating retailer actually provides the consumer to whom it sold the product the full amount of the electronic instant rebate for which reimbursement is requested.
- There is conspicuous point-of-sale notifying consumers of the scanner rebate offer; notice shall be displayed at all times during which the rebate program is being offered to consumers and shall include the alcoholic beverage product that the rebate applies to; the amount of the instant rebate; and that the rebate is to be given electronically at the cash register.
- A supplier may give no monies or other compensation, directly or indirectly, to a retailer in exchange for the retailer's participation in the scanner price rebate program.
- No monies or other things of value may be furnished, directly or indirectly, by a participating supplier to the retailer in connection with the program's advertising or any other aspect of the program's operation except that a supplier may reimburse the retailer for the face value of its instant redeemable coupons that represent actual sales to the retailer's customers.
- The scanner rebate program must be made available to all retailers in the trading area involved on the same terms and conditions.

## **DECORATIONS**

Suppliers may give decorations, such as corrobuff, tinsel, foil or bunting with a value of up to \$50 per premises at any one time, to off-sale retailers (ABC Rule 106). The decorations must have no intrinsic or significant utilitarian value or secondary value other than as embellishments (ABC Rule 106(b)(4)). Suppliers may not pay or credit the retailer for the display or for any expense incidental to its operation (such as electricity). Decorations may not refer to the retailer's name or business (ABC Rule 106(f)).

Items not permitted to be given to a retail licensee by this section may be sold or rented to the retailer by a wholesaler (Section 25503.1(b)).

Note that this applies to items that are generally incidental to a display. Most other items, such as pennants and table toppers that contain conspicuous brand advertising, are permitted to be given free of charge as signage.

## **DELIVERY AND STORAGE OF ALCOHOLIC BEVERAGES**

Business and Professions Code Section 25633 provides that alcoholic beverages may be delivered from 3 a.m. to 8 p.m. Monday through Saturday. Sunday deliveries are prohibited. However, a wholesaler may sell to a retailer at the dock on Sunday. Delivery to consumers must be from the licensed premises pursuant to a specific order. Tax-paid beer and wine may be stored anywhere.

Distilled spirits may only be stored on the retailer's licensed premises; a licensed public warehouse; or in a private warehouse for which the Department has issued a permit.

In order to accommodate venues that do not have enough storage, a wholesaler may rent (at fair market value) a trailer to a licensee for auxiliary storage. The rental of a trailer makes it the “temporary property” of the licensee, thus precluding the return of any unused beer to the wholesaler at the conclusion of the event.

**(See also “Temporary One-Day Licenses/Festivals”)**

## **DIRECT SHIPMENTS AND ON-LINE SALES OF ALCOHOLIC BEVERAGES**

### **Direct Shipments:**

This activity involves shipments of alcoholic beverages made directly to California consumers that originate from points outside of this state. "Wine (or beer)-of-the-month club" is a common format used by companies engaged in direct shipping.

Direct Shipments are regulated by California's importation and tied-house laws.

California's regulatory scheme for the importation, sale and distribution of alcoholic beverages is based on a legally structured "three-tier system" (i.e., segregated distribution from licensed producer/importer to wholesaler to retailer). The laws which implement this distribution structure permit alcoholic beverages to be brought into California only when the beverages are consigned and delivered to an importer licensed by this Department (Section 23661).

Direct interstate and international shipments of alcoholic beverages to consumers in this state are prohibited. Two exceptions to this prohibition exist under Sections 23661.2 and 23661.3 of the California Business and Professions Code. Section 23661.2 authorizes limited direct shipments of wine under specified conditions. It allows unlicensed adults in this state to receive no more than two cases of wine (no more than nine liters each case) per month for personal use and not for resale from a retailer or an individual in another state which allows adults of that state to receive comparable shipments of wine from California. Section 23661.3 authorizes a person licensed as a winegrower in another state, who obtains a Wine Direct Shipper Permit (Type 82) from the Department, to sell and ship wine directly to a California adult resident for personal use and not for resale. There is no limit as to how much wine may be shipped to a given individual under these circumstances. The annual fee for the permit is \$10. The application form and instructions are available on the Department's Web site ([www.abc.ca.gov](http://www.abc.ca.gov)). Direct interstate or international shipments of beer and distilled spirits to unlicensed adults residing in California are prohibited.

### **On-Line Sales and Marketing:**

The use of the Internet as a sales and marketing tool is widespread in the alcoholic beverage industry. In the retail sector, on-line companies with little or no physical presence in California are seeking to offer alcoholic beverages for sale to consumers in this state.

An on-line retail business cannot legally sell alcoholic beverages in California unless it obtains a Department-issued license. An inability to establish and maintain a sufficient physical presence in this state is problematic from a licensing standpoint. In order to obtain the required retail license, an on-line business would need to operate in conjunction with a "brick and mortar" retail store pursuant to Rule 27 CCR. (All retail licensees must comply with Rule 27, except for bona fide wholesalers holding an off-sale beer and wine license at the wholesale premises.)

Another potentially problematic area for on-line retailers is inventory. Under this state's distribution system, retail licensees are required to purchase their stock of alcoholic beverages from in-state sources, i.e., licensed wholesalers, winegrowers or beer manufacturers. And, under Rule 27, a retailer's alcoholic beverage inventory must be "displayed and available for convenient inspection and purchase by the general public."

Under the ABC Act, only California-licensed retailers, winegrowers and beer manufacturers are authorized to make direct sales of their packaged alcoholic beverages to adult consumers in this state. The Department has determined as a matter of policy that it is permissible for those licensees to solicit and accept purchase orders for their alcoholic beverage products from consumers by direct mail, telephone, or on-line computer. Regardless of how orders for alcoholic beverages are processed and fulfilled, licensees must comply with all applicable laws and rules, which include storage, delivery and recordkeeping requirements. (Sections 23357, 23358, 23393 and 23394 B&P).

The Wine Institute, a trade association of California wineries, maintains a state-by-state analysis of laws regarding direct interstate wine shipments on its Web site: [www.wineinstitute.org](http://www.wineinstitute.org).

**Re unlicensed third-party service providers:** <http://www.abc.ca.gov/trade/Advisory-Third%20Party.pdf>

## DISPLAYS AND DISPLAY ENHANCEMENTS

### Displays:

There are two types of displays that are permitted to be furnished to off-sale licensees by alcoholic beverage suppliers (ABC Rule 106).

- (1) **Temporary Floor Display** – The exhibition of beer, wine or distilled spirits by means of racks, bins, casks, shelving and similar devices from which alcoholic beverages are displayed and sold. Such displays shall bear conspicuous advertising required of a sign. “Temporary” means a period of time not exceeding 4 months. This type of display must sit on the floor and cannot be suspended from the ceiling or placed on a counter. ABC believes that cut cases and/or floor stackings of alcoholic beverages fit within the definition of “temporary floor displays.” Displays themselves cannot have secondary or utilitarian value. For instance, a temporary floor display that also refrigerates or cools alcoholic beverages must be sold or rented at fair market value by a wholesaler to a retailer.
- (2) **Window Display** – The exhibition in windows of any or all of the following: permitted signs, promotional material, decorations, and the advertised alcoholic beverage product(s). Unlike the “floor display,” a window display may stay in place for more than 4 months and there is no requirement for the display to actually hold the advertised alcoholic beverage(s). Displays themselves cannot have secondary or utilitarian value.

### Display Enhancements:

These are generally defined as items that complement a permitted display, such as sports or recreational equipment, barbecues, umbrellas, boats, motor vehicles, and similar paraphernalia that have intrinsic or utilitarian value. These items need not be brand-identified. Display enhancements that have been rendered **permanently** unusable may be furnished free to retailers. If any item retains its intrinsic or utilitarian value then it must be rented or sold to the retail licensee (Business and Professions Code Section 25503.1).

## DONATIONS OF ALCOHOLIC BEVERAGES

Business and Profession Code Section 25503.9 authorizes donations of alcoholic beverages to specified non-profit organizations. It is important to carefully review the statutory provisions to be certain that donations are permitted under this law. If not specifically authorized by statute then the donation is prohibited.

A nonprofit corporation that is required to obtain a license to sell wine under Section 23300 may receive and possess wine donated to it if, at the time of receipt of the wine, the nonprofit corporation has submitted an application with the department for a license to sell the donated wine. Nothing in this section is intended to affect or otherwise limit the application of Section 25503.9. (Section 25607.5)

Winegrower: May give or sell wine to a nonprofit organization listed in subsections (a)(1), (a)(2), (a)(3) and subsections (b)(1), (b)(2) and (b)(3) of Section 25503.9.

Beer Manufacturer: May give or sell beer to a nonprofit organization listed in subsections (a)(1), (a)(2), (a)(3) and subsections (b)(1), (b)(2) and (b)(3) of Section 25503.9.

- Beer may be sold at a price other than the price listed on the Malt Beverage Price Schedule filed with the Department.

Distilled Spirits Manufacturer: May give or sell distilled spirits to a nonprofit organization listed in subsections (a)(1), (a)(2), (a)(3) and subsections (b)(1), (b)(2) and (b)(3) of Section 25503.9.

Distilled Spirits Manufacturer’s Agent: May give or sell distilled spirits to a nonprofit organization listed in subsections (a)(1), (a)(2), (a)(3) and subsections (b)(1), (b)(2) and (b)(3) of Section 25503.9.

Importer General Licensees (Types 10 or 13): May give or sell beer and/or wine (Type 10) or distilled spirits (Type 13) to a nonprofit organization listed in subsections (a)(1), (a)(2), (a)(3) of Section 25503.9.

- Beer may be sold at a price other than the price listed on the Malt Beverage Price Schedule filed with the Department.

Beer and Wine Wholesaler (Type 17) that also holds a Beer and Wine Importer (Type 09) license: May give or sell beer and/or wine to a nonprofit organization listed in subsections (b)(1), (b)(2) and (b)(3) of Section 25503.9.

- Beer may be sold at a price other than the price listed on the Malt Beverage Price Schedule filed with the Department.

Beer and Wine Wholesaler (Type 17) that also holds an Off-Sale Beer and Wine (Type 20) license and only sells wine:  
May give or sell wine to a non-profit organization listed in subdivisions (b)(1), (b)(2) and (b)(3) of Section 25503.9.

- Beer may be sold at a price other than the price listed on the Malt Beverage Price Schedule filed with the Department.

Retailers: Generally are prohibited from donating alcoholic beverages. There are a few limited exceptions listed under Sections 24045.2, 24045.3, 24045.4, 24045.6, and 24045.9.

## **ENTERTAINING RETAIL LICENSEES AND THEIR EMPLOYEES**

Suppliers may provide food and beverages to retailers and their employees at business meetings, if the employees are involved in the retailer's business decisions. A distributor also may provide admission tickets to athletic events and other entertainment, if the principals or employees to whom they are provided are involved in the retail licensee's business decisions. (Business and Professions Code Section 25503.27)

## **EVENT SPONSORSHIPS**

It is a violation of ABC law for an alcoholic beverage supplier to participate in a sponsored promotion by a permanent retail licensee, be it for a nonprofit or for-profit activity. ABC has consistently ruled a supplier's involvement in promotions involving permanent licensees to be illegal if the retailer, directly or indirectly, gains a benefit from the supplier's sponsorship of the event. Although the sponsorship money may ultimately go to a nonprofit organization, ABC contends that a retail licensee may benefit from the exposure provided by a supplier's sponsorship money, thereby directly or indirectly providing "something of value" to a retail licensee.

Suppliers may sponsor contests by giving money to amateur or professional organizations, provided that the supplier's products are not exclusively sold at the event, and that entry to the event shall not be conditioned on purchase of the supplier's products (ABC Rule 106(i)(2)).

Suppliers may also provide sponsorship dollars and services for nonprofit charitable events as long as the event does not benefit a permanent licensee and the sponsorship is not conditioned on the sale of the supplier's products.

Sponsorship agreements that contain a provision for sponsors' signage to be placed in the venue should be entered into only if the venue has a "tied-house" exemption.

## **EXPORT SALES**

No ABC license is required to export alcoholic beverages from California to another state or foreign country. Prospective exporters should contact the Department of the Treasury, Alcohol and Tobacco Tax & Trade Bureau ([www.ttb.gov](http://www.ttb.gov)) to determine whether a federal basic permit is required. Licensed retailers cannot export alcoholic beverages for resale because retailers may only sell alcoholic beverages to consumers regardless of where the customer is located.

Section 23107 of the Alcoholic Beverage Control Act and Rule 54 of the CA Code of Regulations address the issue of exporting alcoholic beverages from this state to either another state or to a foreign country.

### **Section 23107:**

Any person may, in accordance with rules and regulations to be prescribed by the department, purchase and take delivery of alcoholic beverages within this State for delivery or use without the State and may, without obtaining any license in this State, export the same from this State within 90 days from the date of such purchase.

## **Rule 54:**

Manufacturers, winegrowers, rectifiers, wholesalers, manufacturer's agents, and importers may sell alcoholic beverages specified in their licenses to unlicensed persons (including aircraft, fishing vessels and commercial passenger or freight vessels) who take delivery thereof within this State for delivery or use without this State. Where the sale is made without the payment of California excise tax, export or actual removal from this State must be accomplished within 90 days from the date of the delivery within this State, and may only be accomplished by one of the following methods:

- (a) If in bond, then under the continuous supervision of the United States Customs or United States Internal Revenue authorities until removal from this State has been effected.
- (b) In private vehicles owned or operated by out-of-state purchasers who hold an export identification permit issued by the State Board of Equalization pursuant to Rule 2563, Subchapter 6, Chapter 2, Title 18, California Administrative Code.
- (c) By common carrier.

Sales of alcoholic beverages to persons operating commercial fishing vessels, private freight and/or passenger-carrying vessels, or to commercial aircraft, for use as ships or aircraft stores outside this State, or upon the high seas, may be made only pursuant to a written order for the purchase of the alcoholic beverages specified in the order. Such purchase order must be signed by the captain of a commercial fishing boat or private freight and/or passenger-carrying vessel or the pilot of the aircraft, or by a duly authorized agent of the owner of the aircraft authorized in writing to sign such purchase orders. All such purchase orders shall contain an acknowledgment that the alcoholic beverages are for use only as ships or aircraft stores outside this State or upon the high seas.

All alcoholic beverages sold and delivered, California tax free within this State, which are intended for ultimate delivery and use outside this State within 90 days, may, until exported or removed from this State, be stored only in bonded or licensed public warehouses and in private warehouses. Such warehouses shall keep and maintain for a period of three years records showing any change in possession of such alcoholic beverages, and shall upon demand make such records available to the Department of Alcoholic Beverage Control, the State Board of Equalization, and to the licensed California seller of such alcoholic beverages.

## **FOOD PRODUCTS CONTAINING ALCOHOL**

Per se, the Department does not regulate food products containing alcohol. However, some food products (e.g., "gelatin shots," gelato, ice cream and other frozen desserts) that contain ethyl alcohol fall under the statutory definition of an alcoholic beverage per Section 23004 of the ABC Act, as follows:

**23004. "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.**

Food products containing alcohol that are by definition "alcoholic beverages" may only be sold by persons that hold appropriate alcoholic beverage license(s). These products, if manufactured in California, may only be manufactured by specified licensees, generally rectifiers.

Candy, confections, cakes, cookies, and other baked goods that contain alcohol but are not defined as "alcoholic beverages" may be manufactured, imported, or sold by any person without any requirement to hold an alcoholic beverage license. It is possible, however, that some or all of these items could fall under Section 307 of the Penal Code that restricts the sale of specified food items only to persons who are at least 21 years of age. Section 307 is as follows:

**307. Every person, firm, or corporation which sells or gives or in any way furnishes to another person, who is in fact under the age of 21 years, any candy, cake, cookie, or chewing gum which contains alcohol in excess of 1/2 of 1 percent by weight, is guilty of a misdemeanor.**

Manufacturers of food products containing alcohol, but not items classified as "alcoholic beverages," must purchase ethyl alcohol only from specified sources per Sections 23380 and 23385. Off-sale general licensees and wholesalers cannot sell alcoholic beverages to food manufacturers.

The Department has no special labeling requirements for food products containing alcohol but it is recommended that these products are labeled in a manner that will alert potential customers that the products contain alcohol and, under certain circumstances, cannot be sold to minors.

## **GIFT BASKET COMPANIES**

A retail gift basket business cannot legally sell alcoholic beverages in California unless it obtains a Department-issued license. The most common license types associated with such businesses are the Type 20 (Off Sale Beer and Wine) or the Type 21 (Off Sale General). In order to obtain the required retail alcoholic beverage license, a business must operate a "bricks and mortar" retail storefront pursuant to Rule 27 of the California Code of Regulations, Title 4.

Licensed alcohol retailers must maintain inventory. Under California's distribution system a retail licensee is required to purchase its stock of alcoholic beverages from in-state sources, i.e., licensed wholesalers, winegrowers or beer manufacturers. Per Rule 27, a retailer's alcoholic beverage inventory must be "displayed and available for convenient inspection and purchase by the general public."

**(See also: "Direct Shipments and On-Line Sales of Alcoholic Beverages")**

## **HAPPY HOUR PROMOTIONS**

### **"Happy Hour" Promotions**

The ABC Act does not, per se, address "Happy Hour" activities. Sometimes, cities or counties enact ordinances that prohibit or restrict these promotions. The Department may also impose conditions that restrict or limit these activities.

Retail licensees may advertise the sale and service of alcoholic beverages. They may advertise drink prices, brand names (provided they are paying the entire cost for the ad), promotions, and "happy hour" information (prices, times, brands, etc.). While drinks may be advertised at reduced prices, these specially-priced drinks cannot be made available only to certain groups of persons (e.g., age or gender-specific specials). This violates Business and Professions Code Section 125.6 and Section 51 of the Civil Code.

### **Free/Complimentary Alcoholic Beverages**

Retailers cannot offer complimentary or free alcoholic beverages, but may offer packages that include alcoholic beverages, provided the total charge to the customer covers their cost of acquisition (to prevent a free goods violation).

### **"2 for 1", "Buy 1, Get 1 Free"**

Retailers cannot offer alcoholic beverages for on-premises consumption at "two for the price of one," "buy one, get one free," "all you can drink," or under any other scheme where the expressed or implied meaning is that one customer, in order to receive a reduced price, is required to purchase more than one drink at one time.

## **IMPORTATION OF ALCOHOL – COMMERCIAL USE**

Alcoholic beverages can be brought into California only by common carriers and only when the beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed by this Department (Business and Professions Code 23661). Direct shipment of alcoholic beverages to California retailers and consumers is prohibited (see Sections 23661.2 and 23661.3 for exceptions). A Certificate of Compliance is required from ABC for all out-of-state vendors shipping beer into California and a Distilled Spirits Shippers Certificate is required for all vendors shipping distilled spirits into California. Section 32109 of the Revenue and Taxation Code provides that common carriers (except railroad and steamship companies) before engaging in the business of transporting shipments of alcoholic beverages into this state must register with the California Board of Equalization and make application for an interstate alcoholic beverage transporter's permit.

See also "Non-Retail Sales of Alcoholic Beverages"

## IMPORTATION OF ALCOHOL – PERSONAL USE

Adults (persons age 21 or older) who bring alcoholic beverages into California for *commercial or business purposes* must be licensed by the Department of Alcoholic Beverage Control (ABC). No person under 21 years of age may bring in any quantity of alcoholic beverages under any circumstances.

Adults who bring alcoholic beverages from a foreign country into California for *personal or household use* do not need an alcoholic beverage license. However, some restrictions do apply as explained below (Section 23661). Other than the limited exception provided in Section 23661.1 (chartered flights) it is unlawful for an unlicensed person to bring in alcoholic beverages for any purpose from another state of the United States.

### Returning from a Foreign Country

Alcoholic beverages must accompany the returning traveler and may not be shipped to California at a later date.

- **Travel by Steamship or Airplane**

Adults traveling into California from a foreign country by steamship or airplane may bring with them a reasonable amount of alcoholic beverages for personal or household use. A reasonable amount is not more than 60 liters (approximately five cases). (ABC agreement with U.S. Customs and Border Protection).

- **Returning from Mexico**

Section 23661 of the CA Business and Professions Code limits the quantity of alcohol brought into California from Mexico for personal or household use as follows:

- A pedestrian crossing the international border may bring in only the amount of alcoholic beverages which are exempt from payment of duty in accordance with the existing provisions of federal law (currently, this is one-liter every 31 days). Note: This limit applies to all persons regardless of state or country of residence. No waivers are available.
- A California resident crossing the international border in a vehicle that is not a common carrier may bring in only the amount of alcoholic beverages which are exempt from payment of duty in accordance with the existing provisions of federal law (currently, this is one-liter every 31 days).
- Non-California residents crossing the international border in a vehicle that is not a common carrier can bring with them a reasonable quantity of alcoholic beverages (up to five cases or 60 liters) provided the beverages are for personal or household use.
- A California resident or any other person crossing the international border via common carrier may bring in a reasonable quantity of alcoholic beverages (up to five cases or 60 liters) provided the beverages are for personal or household use.

For the purposes of Section 23661 "common carriers" are steamship companies and railroads, or any persons who hold themselves out to the general public to transport in interstate or foreign commerce any class or classes of passengers or property, or both, for compensation by air or highway, who actually engage in such transportation, and who hold an interstate alcoholic beverage transporter's permit as required by Section 32109 of the Revenue and Taxation Code.

Persons who transport only property owned or consigned to themselves shall not be deemed to be common carriers within the meaning of this section.

It should be noted that "common carriers" do not include taxicabs or sightseeing buses crossing the international border.

### New California Residents

An adult who is moving to California after an extended stay in a foreign country may bring alcoholic beverages through U.S. Customs if all of the following conditions are met:

- The alcoholic beverages are shipped via common carrier (i.e., steamship, airplane, or railroad);

- The alcoholic beverages are for personal or household use only (and not for sale);
- The alcoholic beverages are a reasonable quantity by U.S. Customs' standards;
- The alcoholic beverages are with the person's unaccompanied household effects; and
- The person could not physically accompany the shipment of household effects to the United States.

*Note: U.S. Customs and Border Protection is not obligated in any way to clear every shipment in these situations. It may exercise its own discretion on a case-by-case basis and may deny approval when justified.*

### **Out-of-State Residents Traveling Through California**

Out-of-state adult residents, who enter California from a foreign country, may arrange for their baggage containing alcoholic beverages to be continuously transported through California via common carrier. The traveler may not use the alcoholic beverages within California's borders. (Section 23109 Business and Professions Code)

### **Military Personnel**

#### **• Relocating Household**

When a service member relocates his or her household effects from a foreign country to California as part of a permanent change of duty station, he or she may include alcoholic beverages only if they are for personal or household use. The Department has no objection if the alcoholic beverages are physically included with other household effects, such as clothing and furniture, or if they are shipped separately.

*Note: There is no federal limit on the amount of alcohol someone may import into the U.S. for personal use, however, large quantities might raise the suspicion that the importation is for commercial purposes, and a Customs and Border Protection (CBP) officer could require you to obtain a federal import license before releasing the shipment. If so, the corresponding state license(s) would also be required. CBP is not obligated in any way to clear every shipment. It may exercise its own discretion on a case-by-case basis and deny entry when justified. If you intend to have a large quantity of alcohol shipped to you for personal use, CBP suggests that you contact the entry branch of the port where your shipment will be entering the United States to discuss your situation in advance. You should also contact the nearest office of the Department to determine whether your circumstances may require a state license.*

#### **• Non-Relocating Household**

An adult member of the United States Armed Forces, who was or is serving outside of the United States, may ship to California the duty-free amount of four liters (three liters of which must have been manufactured or bottled within the United States).

However, when unaccompanied the alcoholic beverages must be shipped via common carrier and consigned to a California licensed importer.

The service member may then claim the alcoholic beverages by going to the consignee's premises and showing satisfactory military identification.

### **Foreign Diplomats**

Foreign diplomatic personnel and members of their staffs (includes majors or above of the Military Committee of NATO) may import duty-free alcoholic beverages from suppliers outside California if the shipments are sent directly to the foreign diplomat or his/her staff member. Foreign trade zones are considered to be outside California.

## **IN-HOME WINE PARTIES**

A licensee authorized to sell wine to consumers for consumption off the premises where sold may engage in "in-home wine parties" subject to certain restrictions.

The licensee must pre-sell a sample selection of wines to the host or hostess (that is, the homeowner) who will provide these beverages to invited guests in their home. The wine must be delivered from the licensed premises to the host/homeowner and payment must be collected prior to the event. No other product samples, other than the pre-sold samples, can be provided by the licensee during the event.

Upon arrival at the home, the licensee may provide educational information to guests in attendance. This would include discussing the characteristics and virtues of the wine. Order blanks or "preference" cards can be completed by the guests and collected for sales and deliveries, at a later time, of product maintained at the licensed premises. All sales and deliveries must be made from the licensed premises. Upon completion of the event all pre-sold wine samples are the property of the host/homeowner. The licensee is prohibited from accepting returns of any unused portions of the samples.

Upon returning to the licensed premises, the licensee may fill the orders taken at the in-home sampling and subsequently deliver those items from the licensed premises to the purchaser(s). Please note that the licensee cannot fill orders taken at the home from a supply maintained away from the premises, such as from a vehicle. Also, all beverages sold to the host/homeowner or their guests must be sold from product that has been lawfully purchased in advance from authorized supplier(s). Such beverages cannot be delivered or drop shipped to the consumer directly from a supplier.

The licensee may not provide any gifts (e.g., host/hostess gifts) or prizes to any participants unless otherwise authorized (Section 25600; Rule 106).

## **INSURANCE COVERAGE AND INDEMNITY AGREEMENTS**

### Retailer requests proof that the supplier is insured.

This request does not place any economic burden on the supplier and does not give anything of value to the retailer since the only thing requested is proof that the supplier has obtained adequate insurance. The supplier may provide a copy of the face sheet of an insurance policy or binder and send it to the retailer. The primary basis for objecting to such a request would be that a supplier desires to maintain confidentiality concerning its insurance status.

### Retailer requests supplier to add retailer as an additional insured.

The Department of Alcoholic Beverage Control in a letter, dated August 31, 1992, stated that "...alcoholic beverage suppliers may not provide liability insurance that names a specific retail licensee as the insured party...." Suppliers should not enter into indemnity agreements with specific retail licensees. Such agreements, if executed, would place both the supplier and retailer in violation of the tied-house statutes that prohibit giving a thing of value in connection with the sale or distribution of alcoholic beverages.

### Retailer requests the supplier to sign an "indemnity agreement".

Sometimes retailers ask a supplier to sign an "indemnity agreement" using a particular form that the retailer has developed. The Department suggests that a supplier not sign such indemnity agreements because to do so would have the effect of giving advantage to selected retailers. Even if a supplier was to sign indemnity agreements whenever requested by a retailer, there are some retailers who do not request indemnity agreements, who therefore would be at a selective disadvantage. Furthermore, because each retailer develops the indemnity agreements independently, they vary significantly in scope. Some are extremely broad, some narrow. This factor also would give some retailers a selective advantage over other retailers and is deemed illegal by the Department.

### Vendor's Endorsements

The Department of Alcoholic Beverage Control has concluded that a supplier may legally furnish such "additional insured" coverage by means of a "Vendor's Endorsement" if it includes all retailers with whom the supplier deals, but not if the "additional insured" status is given selectively to particular retailers. If a supplier decides to obtain "additional insured" coverage in favor of one retailer, the supplier should simultaneously provide identical coverage to all retailers. Furthermore, the coverage provided in the insurance must be limited to the legal liability of the vendor/supplier for damages that arise from the product or the negligence of its employees.

## **LIMOUSINES/HOT AIR BALLOONS**

### Limousines

No license or permit is required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission; provided there is no extra charge or fee for the alcoholic beverages.

For the purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the limousine service is the same regardless of whether alcoholic beverages are served. (Section 23399.5(a)).

### **Hot Air Balloons**

No license or permit is required for the serving of alcoholic beverages as part of a hot air balloon ride service, provided there is no extra charge or fee for the alcoholic beverages.

For purposes of this subdivision, there is no extra charge or fee for the alcoholic beverages when the fee charged for the hot air balloon ride service is the same regardless of whether alcoholic beverages are served. (Section 23399.5(b)).

## **MANUFACTURING BEER AND WINE FOR PERSONAL USE**

No license is required from ABC to conduct “brew or ferment yourself” activities provided no sales of alcoholic beverages are made from the premises where this activity is conducted and no other license privilege is exercised. The “brew or ferment yourself” concept typically offers participants a facility, equipment and ingredients to make their own product.

Business and Professions Code Section 23356.2 addresses the topic of home manufacturing of beer and wine. Section 23356.2 is as follows:

*(a) No license or permit shall be required for the manufacture of beer for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of beer with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household, or (2) 100 gallons per calendar year if there is only one adult in the household.*

*(b) No license or permit shall be required for the manufacture of wine for personal or family use, and not for sale, by a person over the age of 21 years. The aggregate amount of wine with respect to any household shall not exceed (1) 200 gallons per calendar year if there are two or more adults in the household or (2) 100 gallons per calendar year if there is only one adult in the household.*

*(c) Any beer manufactured pursuant to this section may be removed from the premises where manufactured for use in competition at organized affairs, exhibitions or competitions, including homemakers' contests, tastings, or judgments.*

*(d) Any wine made pursuant to this section may be removed from the premises where made for personal or family use, including use at organized affairs, exhibitions or competitions, such as homemaker's contests, tastings or judging. Wine used under this section shall not be sold or offered for sale.*

*(e) Except as provided herein, nothing in this section authorizes any activity in violation of Section 23300, 23355, or 23399.1.*

Note: If an adult person manufactures beer and/or wine for personal or family use in a facility that is not that person's residence (e.g., a commercial location) the above statute allows that individual to manufacture the same amounts of beer/wine as is allowed at a personal residence. However, the maximum annual limits apply regardless of where the beer and/or wine is manufactured.

**Note: No beer or wine produced for personal use may be given or donated to any non-profit organization for any fundraising activities.**

**No amount of distilled spirits may be manufactured without a license.**

## **MEDIA ISSUES RELATING TO RETAIL ALCOHOLIC BEVERAGE LICENSES**

### **Price, Items/“Happy Hour”**

Retail licensees may advertise the sale and service of alcoholic beverages. They may advertise drink prices, brand names (provided they are paying the entire cost for the ad), promotions, and “happy hour” information (prices, times, brands, etc.). While drinks may be advertised at reduced prices, these specially-priced drinks cannot be made available only to

certain groups of persons (e.g., “Ladies’ Night” specials). This violates Section 125.6 of the CA Business and Professions Code and Section 51 of the Civil Code.

### **Free/Complimentary Alcoholic Beverages**

Retailers cannot offer complimentary or free alcoholic beverages, but may offer packages that include alcoholic beverages, provided the total charge to the customer covers their cost of acquisition (to prevent a free goods violation.)

### **“2 for 1”, “Buy 1, Get 1 Free”**

Retailers cannot offer alcoholic beverages for on-premises consumption at “two for the price of one” or “buy one, get one free,” or under any other scheme where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at one time.

### **Retailer Responsibility**

The retail licensee is responsible for all activities at their licensed premises, whether or not a third party (e.g., radio station, promoter, etc.) indicates that they are “hosting” an event at the licensed premises.

### **Non-Retailer Advertising Permitted**

Manufacturers, importers and distributors (wholesalers) of alcoholic beverages may use broadcast media to advertise their products provided such advertising does not violate any statutory provision in the Alcoholic Beverage Control Act or business regulations of the Department of Alcoholic Beverage Control.

### **Retailer/Non-Retailer “Joint Promotions” Not Permitted**

Non-retailers are prohibited from advertising in conjunction with retail licensees and from cooperatively paying for any ad with a retail licensee.

### **“Tied-House” Statutes**

Sections 25500, 25501, 25502, and 25503 generally prohibit suppliers of alcoholic beverages (e.g., brewers, distillers, winegrowers, importers, distributors, etc.) from furnishing, giving or lending any money or other thing of value, directly or indirectly, to a retail licensee or his/her employee(s).

### **Use of Retailer’s Name in Non-Retailer Advertising Prohibited**

California’s tied-house statutes and Rule 106, CA Code of Regulations, prohibit joint (cooperative) advertising between a supplier and a retailer. A radio or television station affiliated with an alcoholic beverage supplier, acting in conjunction with or on behalf of the supplier, and/or being compensated in any way by the supplier, is considered to be an agent of the supplier. As the agent of the supplier, any unlawful activity committed by the unlicensed media entity will be imputed to the alcoholic beverage supplier as if the supplier had directly committed the violation.

### **Brand Name May Be Included in Retailer Advertising**

A retail licensee may include the brand name of a beer, wine, or distilled spirits in its advertising provided that the retailer has not been compensated in any way, directly or indirectly, by the manufacturer, importer or distributor of that particular alcoholic beverage.

### **Event Promotion by a Non-Retail Licensee**

Alcoholic beverage suppliers cannot advertise an event at a retailer’s premises, or arrange to have their brand in the title of a retailer’s event as a result of a purchase, trade, or other arrangement. Other arrangement would include “promo” mentions promised the alcoholic beverage supplier as part of an ad buy. If a supplier directs a promoter or other third party (e.g., radio station, etc.) to tie its brand name to a retailer event, the promoter or other third party is acting as an

agent of the supplier, even if no money is given or trade has occurred. This would be considered “joint advertising” and is prohibited.

### **Event Sponsorship by Non-Retail Licensee at Retail Premises**

Generally, suppliers of alcoholic beverages cannot sponsor events at retail licensed premises. There are some statutory exceptions contained in the ABC Act for particular venues, such as certain arenas, stadiums, etc.

### **Sponsorship of Station Concert Hotlines by Non-Retailers**

Alcoholic beverage suppliers cannot buy title sponsorship of “Hot Lines” or “Event Lines” from radio stations which listeners call to hear a listing of events at retail locations nor may they be referenced as a sponsor of such “Lines.”

## **NON-RETAIL SALES OF ALCOHOLIC BEVERAGES**

A person who wants to import and sell beer or wine to wholesalers only should apply to this Department for a beer and wine importer's general (Type 10) license. To import and sell beer or wine to retailers and wholesalers, a beer and wine importer's (Type 09) license and a beer and wine wholesaler's (Type 17) license are needed. On the other hand, if an out-of-state person merely wishes to sell or ship to California licensed importers and will not establish a business in California in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California and/or hire any California residents as employees, or otherwise establish a business presence in California, no licenses would be required. Importer licenses are not required for companies that obtain beer and/or wine solely from sources within California.

A person who wants to import and sell distilled spirits to wholesalers only should apply to this Department for a distilled spirits importer's general (Type 13) license. To import and sell distilled spirits to retailers and wholesalers, a distilled spirits importer (Type 12) license and a distilled spirits wholesaler (Type 18) license are required. On the other hand, if an out-of-state person merely wishes to sell or ship to California licensed importers and will not be establishing a business in California in that representatives would only be in the state on a sporadic basis to make general arrangements or to do general missionary work, and he/she will not warehouse or import alcoholic beverages into California and/or hire any California residents as employees, or otherwise establish a business presence in California, no licenses would be required.

Out-of-state or foreign distillers that have a sales office or other business presence in California should apply for a Distilled Spirits Manufacturer's Agent (Type 05) license.

Alcoholic beverages can be brought into California only by common carriers and only when the beverages are consigned to a licensed importer, and only when consigned to the premises of the licensed importer or to a licensed importer or customs broker at the premises of a public warehouse licensed by this Department. Section 32109 of the Revenue and Taxation Code provides that common carriers (except railroad and steamship companies) before engaging in the business of transporting shipments of alcoholic beverages into this state must register with the California Board of Equalization and make application for an interstate alcoholic beverage transporter's permit. Direct shipment of alcoholic beverages to California retailers is prohibited.

Applications for licenses are obtained from the [district office](#) having jurisdiction over the geographical location of the business.

## **PRIVATE PARTIES**

Section 23399.1 of the California Business & Professions Code explains the circumstances when an alcoholic beverage license is not required:

1. That there is no sale of an alcoholic beverage.
2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of.
3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages.

All three of the above elements must exist. If a proposed event meets the statutory definition of a “private party,” then no ABC license is required.

Note: Any event occurring on a licensed premises is not a “private party” under this provision. Events or activities on a licensed premises are subject to all rules and regulations applying to the licensee.

Be aware that the definition of “sale” includes indirect transactions other than merely paying for a glass of wine or other drink containing alcohol. For instance, if an admission fee is charged or there is a charge for food and the alcohol is included, but not separately charged, an ABC license is required.

Note: No provision of the ABC Act may be violated even though the event itself does not require a license.

If a license is required, or you have a question about a particular event, you should contact the ABC [district office](#) closest to where the event will occur.

## RECORDS

Records of alcoholic beverage sales transactions should be kept separate from non-alcoholic beverage sales records, and should be kept for a period of three years. Records must be readily accessible and provided to the Department upon request.

### Maintain Alcoholic Beverage License Information with Records

Business and Professions Code Section 23300 requires sellers of alcoholic beverages to obtain an alcoholic beverage license. Suppliers must determine the validity of a retailer’s alcoholic beverage license before selling alcoholic beverages to that retailer. Suppliers should maintain license numbers and license status changes with their customer records to prevent sales to unlicensed persons.

## RETAIL SALES PRICE

The Department of Alcoholic Beverage Control does not regulate the retail price of alcoholic beverages.

## RETAILER-TO-RETAILER PURCHASES OF ALCOHOLIC BEVERAGES

Business and Professions Code Section 23402 requires permanent retail on- and off-sale licensees to purchase alcoholic beverages for resale from wholesalers, manufacturers, winegrowers, or rectifiers. Daily On-Sale General licensees must purchase distilled spirits from off-sale general retail license holders. Please note that warehouse stores such as Costco, Sam’s Club, etc. are *retailers* and state law prohibits retailers from selling alcoholic beverages for resale, except to holders of a Daily On-Sale General license.

## RETURNS OF ALCOHOL BY CONSUMERS TO RETAILERS

Section 25600 authorizes the return (for refund or exchange) of alcoholic beverages to the seller by dissatisfied consumers. The advertising of “money-back guarantees” by retailers is specifically disapproved.

Note: State law does not require the seller to accept a return or make an exchange of alcoholic beverages. This is discretionary with the licensee.

Caution: A consumer cannot overbuy for a party and then return any of the unused alcoholic beverages. Neither can the recipient of a gift exchange it for other merchandise or be given a credit, because the recipient is not returning alcoholic beverages.

## **ROYALTY PAYMENTS BY RETAILERS TO SUPPLIERS FOR USE OF TRADE NAME**

It is permissible for retailers to use trade names associated with alcohol manufacturers provided that the royalty paid by the retailer to the manufacturer is full market value and there is no money or any other thing of value given to the retailer in association with the use of the supplier's name. There can be no free advertising, no free alcohol, no free promotions etc. done for the benefit of the retailer by the supplier. When the retailer pays the royalty, the name association alone is not considered to be a thing of value.

**Note:** A retailer may not license the use of its trade name to a manufacturer of alcoholic beverages, except for use in a private label brand sold only by that retailer.

## **SALES OF BEER "TO GO"/GROWLERS**

### **Retail Licenses:**

Section 23401 grants certain off-sale privileges to on-sale licenses that allow alcoholic beverages to be sold for off-site consumption. Section 23401 is as follows:

*23401. An on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, also authorizes the exercise of the rights and privileges granted by an off-sale beer and wine license; provided, however, that a daily on-sale general license issued pursuant to Section 24045.1 shall not authorize the foregoing rights and privileges. None of the licensees mentioned in this section may, by reason of any license mentioned in this section, label, bottle, package, or refill any package with any alcoholic beverage.*

Section 23028 defines "package" as follows:

*23028. "Package" means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper, cap, or in any other manner.*

### **Non-Retail Licenses:**

Beer manufacturers (Type 01 or Type 23) may fill an original bottle or container with beer and sell it to a consumer for consumption off the premises where sold. A consumer may return the bottle or container to the manufacturer to be refilled and resold to that consumer. This filling (or refilling) privilege does not apply to a Type 41, Type 47, Type 48, Type 75, or any other retail license.

One issue that arises is with Section 25200 which mandates certain labeling requirements for beer containers. These requirements also apply to containers returned by consumers for refilling. Section 25200 reads as follows:

*25200. All beer sold in this State shall have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also the true and correct name of the bottler of the beer if other than the manufacturer. No manufacturer, importer, or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon the container or carton, or use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in the container or carton.*

All containers (whether initially sold or refilled by the manufacturer) must leave the manufacturer's premises with approved labeling.

Possible Health and Safety Code violations that may apply to filling containers with beer for off sale consumption should be addressed with the appropriate regulatory agency.

## Brewpub-Restaurant (Type 75) Licenses:

The Type 75 is a retail license. As such, a brewpub-restaurant licensee may not refill containers. However, a consumer may return a container to a Type 75 licensee and the licensee may sell a filled container to the customer.

## SAMPLES

Suppliers may give samples of alcoholic beverages to licensees and their employees who are eligible to purchase the alcoholic beverage, if the licensee has not previously purchased the product, and for the sole purpose of permitting the licensee to determine the grade, type, and quality of the alcoholic beverage. Samples of beer must not exceed quantities of one bottle or can opened on the premises, wine samples must not exceed quantities of 1 quart or liter, and distilled spirits must not exceed quantities of 500 ml or smallest size marketed. Detailed records must be kept for three years. (Business and Professions Code Section 23386 and ABC Rule 52). **Nothing in Rule 52 allows the consumption of alcoholic beverages in an off-sale premises.**

Brewers (but not distributors) may give samples to consumers at beer tastings (1) at the beer manufacturer's premises; or (2) at an event sponsored by a nonprofit organization for persons affiliated with the organization (Business and Professions Code Section 23357.3 and ABC Rule 53.5).

Limited beer sampling by specified licensees and certain conditions is permitted per Section 25503.55 as follows:

*(a) A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may instruct consumers or conduct courses of instruction for consumers, on the subject of beer, including, but not limited to, the history, nature, values, and characteristics of beer, and the methods of presenting and serving beer. A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may conduct such instructions at the premises of a retail on-sale licensee authorized to sell beer.*

*(b) The instruction of consumers regarding beer may include the furnishing of tastes of beer to an individual of legal drinking age. Beer tastes at any individual course of instruction shall not exceed eight ounces of beer per person, per day. The tasting portion of a course of instruction shall not exceed one hour at any individual licensed retail premises. Tastes of beer may not be served to a consumer in their original container but must be served in an individual glass or cup.*

*(c) All tastes of beer served to a consumer as authorized in subdivision (b) shall be served only as part of the course of instruction and shall be served to the consumer by an employee of the on-sale retail licensee.*

*(d) A beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler may not hold more than six courses of instruction per calendar year at any individual on-sale retail licensed premises if the courses of instruction includes consumer tastes of beer.*

*(e) (1) A representative of a beer manufacturer, a licensed beer and wine importer general, or a licensed beer and wine wholesaler, except as provided in paragraph (2), must be present and authorize any tastes of beer conducted at an on-sale retail licensed premises pursuant to this section. The representative shall be responsible for paying the retailer for the tastes of beer served at any course of instruction. Such payment shall not exceed the retail price of the beer.*

*(2) For purposes of this subdivision, a licensed beer and wine wholesaler shall not be a representative of a beer manufacturer or a licensed beer and wine importer general.*

*(f) No on-sale retail licensee shall require one or more courses of instruction pursuant to this section as a requirement to carry a brand or brands of any beer manufacturer, licensed beer and wine importer general, or licensed beer and wine wholesaler.*

*(g) No premium, gift, free goods, or other thing of value may be given away in connection with an authorized course of instruction that includes beer tastes, except as authorized by this division. Failure to comply with the provisions of this section shall be presumed to be a violation of Section 25500.*

*(h) A retail licensee may advertise the instructional tasting event using interior signs visible only within the establishment.*

*(i) (1) A beer manufacturer, a licensed beer and wine importer general, and a licensed beer and wine wholesaler shall maintain an individual record of each course of instruction involving tastes of beer for three years.*

*(2) Records shall include the date of the tasting, the name and address of the retail licensee, and the brand, quantity, and payment made for the beer furnished by the beer manufacturer, the licensed beer and wine importer general, or the licensed beer and wine wholesaler.*

Retailers may not give away free samples of beer to consumers.

On-sale retail licensees licensed to sell wine or distilled spirits may offer instruction on the wine and distilled spirits by furnishing not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-quarter of an ounce. A single tasting of wine may not exceed one ounce (Section 23386).

Section 25503.5(c) allows specified suppliers to offer consumer instruction. This instruction also permits the giving away of limited samples of wine or distilled spirits. The applicable language is as follows:

*(c) A winegrower or distilled spirits manufacturer, or its authorized agent may instruct consumers at an on-sale retail licensed premises authorized to sell its product with the permission of the retail on-sale licensee. The instruction may include, without limitation, the history, nature, values, and characteristics of the product and the methods of presenting and serving the product. The instruction of consumers may include the furnishing of not more than three tastings to any individual in one day. A single tasting of distilled spirits may not exceed one-fourth of one ounce and a single tasting of wine may not exceed one ounce. The winegrower or distilled spirits manufacturer, or its authorized agent shall remove any unfinished alcoholic beverages that he or she provided following the instruction. Nothing in this subdivision shall limit the giving away of samples pursuant to subdivision (a) of Section 23386.*

Specified suppliers may host educational seminars for licensees and their employees in order to familiarize staff with the products that will be served at the licensed premises. Educational seminars may be held at the retailer's licensed premises or at the supplier's premises (Sections 23386, 25503.5(a) & (b), 25750, 25752 and ABC Rule 52).

## **SIGNAGE**

A supplier may furnish, at no charge, interior signs advertising alcoholic beverages sold by that supplier to a retailer for use within on-sale or off-sale premises (Business and Professions Code Section 25611.1 and ABC Rule 106(c)(1)). Permitted signs must consist of conspicuous brand advertising. Signs that are customized or personalized for a specific retailer must be sold or rented to that retailer at current market price, including the cost of customization/personalization. Interior signs remain the property of a supplier unless sold or given to a retail licensee.

Suppliers must sell or rent exterior signs to retail licensees at not less than the current market price for such signs (Business and Professions Code Sections 25503.1(b) and 25611.1(c), and ABC Rule 106(c)(2)). However, a beer wholesaler must sell or rent exterior signs at not less than cost as defined in Section 17026 of the Business and Professions Code (Business and Professions Code Section 25611.3)

Suppliers shall not place any sign, banner, display, or other device advertising alcoholic beverages on or over any public sidewalk, street or thoroughfare; nor shall any supplier place such signs on or adjacent to any retail premises or parking lot used in conjunction with any premises (ABC Rule 106(c)(2)).

Suppliers may provide nonpermanent interior or exterior signs or banners to temporary licensees at no charge (ABC Rule 106(h)).

No self-illuminating signs advertising beer or wine may be located on buildings or windows concurrent with the retail sale of motor vehicle fuel. Alcoholic beverage advertisements cannot be placed on fuel islands. (Business and Professions Code Section 23790.5).

*(Also see Banners)*

### **Exterior Signs**

*Exterior* signs are signs that are located outside of the licensed premises. (Exception: Signs that are attached to walls, fences or buildings and which face an outdoor patio or similar area that is part of the licensed premises. Such signs are considered "interior" signs even though they may be physically located outside a building.)

*Exterior* signs must either be sold or rented by the alcoholic beverage supplier to the retail licensee. A supplier may not lawfully furnish an exterior sign to a permanent retailer for no charge.

### **Interior Signs**

*Interior* signs are signs that are designed for display inside a licensed premises. Interior signs may be placed inside the window(s) and which are visible from outside the premises.

*Interior* signs may be sold, rented, or given away to retail licensees (on-sale or off-sale). Interior or exterior signs that are "personalized" to the retail account must be sold or rented.

### **Size Limitations**

630 sq. inches maximum size for signs advertising wine or distilled spirits for use in on-sale premises. No size restrictions for signs advertising malt beverages or for any sign for use in off-sale premises.

### **Signs with Utilitarian Value**

No sign advertising wine or distilled spirits may have a secondary value. Such signs may be of value only as advertising. Example: A sign advertising whisky which doubles as a dart board would be a prohibited interior sign. This sign could be sold or rented to the retailer.

## **SOJU**

Soju is a distilled spirit and may be sold only by licensees licensed to sell distilled spirits. However, Business and Professions Code section 23398.5 allows soju, containing no more than 24 percent (24%) alcohol by volume, to be sold at on-sale beer and wine licensed premises subject to the following limitations:

- Soju sold pursuant to this statutory provision must be imported into the United States;
- While the soju must be imported, there is no further limitation on where soju may be produced or bottled; and
- There is no statutory provision that the label state that the product is "Korean soju;" however, the product label must state "soju" and no other derivative of that word such as "shochu."

## **SWEEPSTAKES**

Sweepstakes involving the sale, distribution or marketing of alcoholic beverages are not legal in California.

## **TABLE TENTS**

A supplier may provide to a retailer, at no charge, table tents if the only message on the printed card is alcoholic beverage advertising pertaining to a supplier's products. If the retailer's name, menu specials or other promotional activities appear as part of the written text, the supplier must sell the table tents at current market value, including the cost of customization.

Suppliers may furnish acrylic table tent holders free of charge as long as they are brand-identified and meet the requirements of signage permitted to be furnished to retail licensees.

## **TAPPING EQUIPMENT**

Suppliers may provide tapping equipment (specified in Business and Professions Code Section 25510 as kegs, tapping heads, air lines, alcoholic beverage lines, clamps, washers, coupling devices, rods, vents, filters, valves, and keg spacers) for an initial installation in a new on-sale licensed account or for a changeover of equipment from one tapping system to another.

Suppliers may service, repair and replace the above items of equipment from time to time as necessary. "Service" includes the periodic cleaning of alcoholic beverage lines. All tapping equipment shall remain the property of the supplier who furnished it to the retailer.

Faucets, regulators, gauges, standards, refrigeration and glassware must be sold at current market value to retail licensees.

Distributors may provide draft beer pumps and/or jockey boxes free of charge to temporary one-day licensees, but not to permanent licensees. Other equipment must be sold or rented at fair market value to any licensee.

Suppliers may provide authorized tapping equipment only to on-sale licensees. They may not provide this equipment to off-sale licensees. (Business and Professions Code Sections 25504, 25510, 25659.5)

## **TEMPORARY ONE-DAY LICENSES/FESTIVALS**

Temporary licenses may only be issued to nonprofit organizations, including a charitable, civic, cultural, fraternal, patriotic, political, religious, social or amateur sports organization, for sales to members or guests of members of the organization at the site of and during an organized picnic, social gathering, or similar function of the organization; or for sales to the general public from a premises temporarily occupied at the site of and during a county fair, civic celebration or similar event, or at a designated premises and during a fund-raising event sponsored by a nonprofit charitable, civic, cultural, fraternal, patriotic, political, religious or amateur sports organization. Although they are commonly called "one-day licenses," they may be issued for a period of one to three days.

The type of alcoholic beverage specified on the license (beer, wine or distilled spirits) may be delivered to the licensee within three days of the effective date of the license. Upon a showing of good cause, the department may approve earlier delivery. Temporary on-sale beer or on-sale wine licensees must purchase alcoholic beverages from a licensee authorized to sell alcoholic beverages for resale (i.e., a wholesaler, winegrower, or beer manufacturer). The holder of a Daily On-Sale General license must purchase distilled spirits from an off-sale general licensee.

A nonprofit corporation that is required to obtain a license to sell wine under Section 23300 may receive and possess wine donated to it if, at the time of receipt of the wine, the nonprofit corporation has submitted an application with the department for a license to sell the donated wine (Section 25607.5). Nothing in this section is intended to affect or otherwise limit the application of Section 25503.9.

A distributor may lend, sell or rent draft pumps, ice boxes, and other tapping accessories to temporary licensees. Alcoholic beverages may be returned to the distributor for refund or credit after the event or function.

Temporary licenses generally do not include off-sale privileges. There are several temporary-type licenses that either have only an off-sale privilege or both on-sale and off-sale privileges (Sections 24045.2, 24045.3, 24045.4, 24045.6, 24045.8, and 24045.9.)

A beer and/or wine festival refers to a public tasting event held at a large-capacity venue such as a park, fairground, convention center, etc. where numerous beer manufacturers and/or winegrowers are represented.

ABC Rule 53 governs "winetastings" and ABC Rule 53.5 governs "beer tastings."

The respective rules allow winegrowers and beer manufacturers to conduct free tastings on their licensed premises. They may also charge for tastings on their licensed premises.

Both winegrowers and beer manufacturers may assist nonprofit organizations to conduct wine and beer tastings at festivals open to the public held off of the winegrower's or beer manufacturer's licensed premises. The nonprofit

organization must obtain a special daily temporary on-sale beer and/or wine license from ABC to conduct such off-site tastings. All samples or tastes must be sold at a festival event. Notwithstanding any other provision of this division, a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine may assist a nonprofit organization holding a temporary wine license in conducting a winetasting. The privilege granted under this section for a beer and wine wholesaler that also holds an off-sale beer and wine retail license and only sells wine shall apply only to wine produced for the donating licensee that is labeled with a brand owned exclusively by the donating licensee and shall include in the tasting only wine donated by the licensee to the event (Section 24045.18).

Physical arrangements at festivals can vary. Often, each winegrower and/or beer manufacturer will have its own booth where only its wine and/or beer products can be purchased. Sometimes, there is a single area where all of the winegrowers and/or manufacturers' products are dispensed.

While winegrowers and beer manufacturers may pour wine and/or beer samples at festivals, members of the nonprofit organization be present as well since the rules state that a winegrower and/or beer manufacturer may assist the holder of a temporary license in conducting a wine and/or beer tasting.

A nonprofit organization who obtains a temporary license must receive all of the net proceeds from the sale of wine, beer and/or distilled spirits. If a separate admission is charged and/or advertising specialties (T-shirts, hats, etc.) are sold, the net profits from these sales may go to someone other than the non-profit organization. However, if the admission charge entitles patrons to obtain wine, beer and/or distilled spirits then the net proceeds attributed to the sale of alcoholic beverages must go to the nonprofit organization.

Winegrowers and beer manufacturers may sell wine and/or beer to nonprofit organizations holding a temporary license. Winegrowers and/or beer manufacturers may also give wine and/or beer to a temporary licensee but only if such temporary licensee is a nonprofit corporation or association exempt from the payment of income taxes under the Internal Revenue Code. Similarly, a distilled spirits manufacturer or a distilled spirits manufacturer's agent may give or sell distilled spirits to a nonprofit charitable corporation or association exempt from the payment of income tax. (Section 25503.9)

An out-of-state beer manufacturer who holds an out-of-state beer manufacturer's certificate (Type 26) may assist nonprofit organizations to conduct a beer tasting. California Winegrower's Agent (Type 27) licensees may assist nonprofit organizations to conduct a wine tasting.

Wholesalers are not permitted to conduct wine or beer tastings, except as provided in Section 24045.18.

A Type 75 (Brewpub-restaurant) license is an on-sale retail license that has a manufacturing privilege. This license does not, however, have the same privileges as a beer manufacturer's license (Type 01 or Type 23). A Type 75 licensee may not give away free tastes of its products on or off its licensed premises. A Type 75 licensee may not assist a nonprofit organization to conduct a beer tasting at a festival or other fundraising event.

## **TIED HOUSE APPLICABILITY TO OUT OF STATE SUPPLIERS OWNING INTEREST IN CALIFORNIA RETAILER**

In 1972, A.G. Opinion #CV 71/358 confirmed that 25500 and 25502 applies to in-state as well as out-of-state suppliers.

An out of state wholesaler located within the United States, Canada or Mexico is generally restricted from holding any ownership interest in any California on-sale or off-sale retail license. This does not apply to entities located in a territory or possession of the United States, to businesses located in foreign countries (other than Canada or Mexico) or to licensees granted an exception under 25503 et seq.

23021. *"Wholesaler" means every person other than a manufacturer, winegrower or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages, in an area within the United States other than a territory or possession of the United States, or within a foreign country having common boundaries with any state of the United States.*

25500. *(a) No manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person shall:*

(1) Hold the ownership, directly or indirectly, of any interest in any on-sale license.

25502. (a) No manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person, shall, except as authorized by this division:

(1) Hold the ownership, directly or indirectly, of any interest in an off-sale license.

Exception for wine-only Types 17/20 or Types 9/17/20 combination: An out-of-state wholesaler could hold an interest in an off-sale retail beer and wine license (Type 20) when combined with a wholesale license in this state dealing in wine only (Section 23378.2).

Note: It is not a violation of California law for in-state supplier-licensees to hold an interest in an out-of-state retailer subject to the other state's laws.

## TRADE SPENDING

Trade spending, where a supplier's representative enters a licensed bar or restaurant and offers to purchase an alcoholic beverage for a consumer, violates Business and Professions Code Section 25600 ("Free Goods"). Section 25503.5(c) permits specified suppliers to conduct consumer instructional seminars, including the furnishing of limited samples of wine and/or distilled spirits. Section 25503.55 allows specified suppliers to conduct beer tastings where limited samples of beer may be furnished to consumers. Such authorized sampling events are not considered "trade spending."

## UNDERTAKINGS

A winegrower who manufactures, produces, bottles, processes, imports or sells *wine only* may hold the ownership of *any* interest in *any* on-sale license or the business conducted under that license. "Winegrower" includes an officer, director, or agent of the winegrower. An undertaking *is required* unless the licensed winegrower, or any winegrower who has a wholesale license, meets all of the following conditions:

1. The on-sale licensed premises are licensed as a bona fide public eating place (defined in Section 23038) **or** a bona fide bed and breakfast inn (defined in Sections 24045.11 and 24045.12).
2. The on-sale licensee must purchase all alcoholic beverages sold and served at the on-sale premises from CA licensed wholesalers, other than from the licensed winegrower who has a wholesale license and an interest in an on-sale license.\*
3. The licensed winegrower and any officer, director, or agent of the winegrower, whether individually or in the aggregate, do not sell and serve the wine products produced or bottled under any brand or trade name owned by that winegrower through more than two on-sale licensed premises in which any of them holds an ownership interest.
4. The number of wine items by brand offered for sale by the on-sale licensee that are produced, bottled, processed, imported, or sold by the licensed winegrower or by any person holding any interest in the winegrower does not exceed 15 percent of the total wine items by brand listed and offered for sale in the bona fide eating place selling and serving that wine. This 15% restriction does not apply to a bona fide bed and breakfast inn.

\*The alcoholic beverage purchase restriction outlined in Paragraph #2 (above) is waived if one of the following conditions is met:

- A. The wine purchased is produced or bottled by, or produced and packaged for, the same licensed winegrower that holds an interest in the on-sale license.

**-OR-**

- B. The wine is produced or bottled by, and is purchased from, a licensed winegrower who sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower.

**-OR-**

- C. The wine is purchased by an on-sale licensee in whose on-sale license a licensed winegrower holds an interest, provided that the winegrower sells no more than 125,000 gallons of wine per year for distribution in this state under all brands or trade names owned by that winegrower

## **UNLICENSED BARTENDERS FOR PRIVATE PARTIES**

Unlicensed bartenders are permissible for parties but the host of the party can only pay the bartender for the services of bartending and not for alcohol sales. Hired bartenders cannot act like licensed caterers; meaning they cannot bring alcohol and charge by the glass; they cannot pick up alcohol for the customer and then be reimbursed; and they cannot take a pre-paid order from a customer and pick up the alcohol and deliver it to the party site. The host of the party must purchase all of the alcohol for the party in advance. The bartender can make suggestions to the party host as to what alcoholic beverages to purchase and in what quantity, bring equipment to the party, be paid a flat fee or by the hour, and collect tips for services only. All alcohol belongs to the host and cannot be returned to the seller by the bartender.

## **VENDING MACHINES AND SELF-SERVICE**

The sale or furnishing of alcoholic beverages by the use of vending machines or self-service is usually problematic. It often results in enforcement problems for this Department and local police agencies as well as compliance issues for licensees.

Regardless of the method of delivery, the licensee is responsible for compliance with all laws and regulations (e.g., service to minors and obviously intoxicated patrons.)

## **WINE EVENT SALES PERMIT**

A winegrower may apply for a Wine Sales Event Permit (Type 81). In addition, approval is required for each event.

Business and Professions Code Section 23399.6 contains a number of requirements and limitations, as summarized below:

- The permit authorizes the sale of bottled wine at festivals, state, county, district or citrus fruit fairs, and at civic or cultural celebrations and the event shall be sponsored by an organization that is exempt from taxation under Revenue and Taxation Code Section 23701(a), including state designated fairs as specified in Revenue and Taxation Code Section 19418, or exempt from taxation under Revenue and Taxation Code Section 23701(b), 23701(d), 23701(e), 23701(k), 23701(l), 23701(r) or 23701(w)
- The sale of the wine shall not be the primary purpose of the event, and the sale shall be for consumption off the premises where sold. No winetasting is allowed under this permit
- The permit shall be valid for a maximum of five consecutive days during the event period
- A wine sales event permit may not be used more than two times a month at a particular location
- At all events, a copy of the wine sales permit shall be maintained
- A licensee holding a wine sales event permit may not sell more than 1,250 gallons of wine per event
- A licensee may not sell more than 5,000 gallons of wine annually pursuant to this permit
- A licensee that is eligible to receive a certified farmers' market sales permit under Business and Professions Code Section 23399.4 and a wine sales event permit may not sell more than a total of 5,000 gallons of wine annually (under both permits collectively).
- The licensee shall annually report to ABC the total gallons of wine sold by that licensee under this permit

## **WINETASTINGS – AMOUNT OF SAMPLE**

Neither the Alcoholic Beverage Control Act (Division 9 of the CA Business and Professions Code) nor the California Code of Regulations specifically defines how much wine constitutes a "taste" or "sample" with respect to winetastings conducted under Rule 53 of the California Code of Regulations.

Rule 53 defines a "winetasting" as the presentation of samples of one or more wines, representing one or more wineries or industry labels, to a group of consumers for the purposes of acquainting the tasters with the characteristics of the wine or wines tasted. This type of tasting generally occurs at a winegrower's place of production or an off-site tasting room

operated by and for the winegrower. A winery may sell or give away these samples or tastes of its wine products. A winery may not offer for tasting any brand(s) of wine that it does not own.

A winery that operates a bona fide eating place (restaurant) on its licensed premises may sell wine, beer and brandy, regardless of source, as part of its food and beverage service offered to the public. A separate license is not required for a winery to perform this function. Wineries may also sell glasses of wine or bottles of wine for consumption on the licensed premises regardless if the winery operates a bona fide eating place.

See Section 23358 of the Act for more information on winegrower license privileges.